

CROCP No.5 of 2021 & connected cases

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 10.11.2021

(1)

CROCP No. 5 of 2021

Nikhil Saraf

.....Petitioner

VERSUS

Arun Kumar Gupta, Home Secretary Chandigarh
Administration and another

....Respondents

(2)

CROCP No. 6 of 2021

Nikhil Saraf

.....Petitioner

VERSUS

Anurag Aggarwal, Additional Chief Home Secretary,
Government of Punjab and others

....Respondents

(3)

CROCP No.7 of 2021

Nikhil Saraf

.....Petitioner

VERSUS

Rajeev Arora, Additional Chief Home Secretary,
Government of Haryana and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Petitioner in person.

Mr. Charan jit Singh Bakshi, Addl. P.P. with
Ms. Madhu Dayal, Advocate, for U.T. Chandigarh.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

Ms. Tanisha Peshawaria, DAG, Haryana.

AUGUSTINE GEORGE MASIH, J.

By this order, we propose to decide three Criminal Contempt Petitions which have been preferred by petitioner – Nikhil Saraf, who appears in person and submits that he had filed complaints with the State Human Rights Commissions across the India on the issue of human rights violation and interference in the administration of justice, which have been entertained by the Commissions and progressive directions in this regard have been issued to the State Police Departments. It has also been claimed by him that the petitioner works actively in social sector and has few online media publications and has even filed detailed Public Interest Litigations raising several issues including these Criminal Contempt Petitions.

2. His submission is that the act and conduct of the respondents, who are heading the departments/districts, where the police authorities while publishing the photographs and news items in the Press, Twitter, Facebook and Instagram, publishing pictures of the arrested persons/accused virtually pronouncing them guilty without a fair and just trial by a Court of Law, amounting to intentional and willful interference in the administration of justice transgressing into a clearly defined role of the Judiciary contrary to the constitutional provisions and the statutory law. The police authorities have given themselves the right to adjudicate the crime and declaring anyone a criminal without following due process of law, whereas the Constitution guarantees that an accused is to be treated as innocent till proven guilty by the Courts after following due process of law. The police officials indulge in these type of activities to instill fear and intimidation among general population, where not only the comments are

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flashed but the photographs are also displayed, which is against all tenets of human rights and caused great prejudice against the individuals in the eyes of law and society. It would amount to not only violating the human rights but also violating the fundamental rights of a citizen which is non-negotiable. He, on this basis, contends that the Article 21 of the Constitution of India, which provides for the right of life and personal liberty, stands violated by the act of rash and negligent conduct on the part of the police authorities without taking recourse to the provisions of grant of bail and in only extreme circumstances, to proceed to arrest an individual. Certain tweets have been placed on record as also the photographs showing therein the person who have been arrested or detained for having committed various offences. Prayer has, thus, been made that the respondents be summoned and punished for intentional and willful interference in the administration of justice, transgressing into a very clearly defined role of Judiciary by pronouncement of the arrested persons/accused guilty without a fair and just trial by a Court of Law awarding punishment contrary to the constitutional, procedural or legal provisions. Directions have also been sought to be issued to the respondents to remove all pictures of the arrested persons/accused which have been published in various social media platforms of the police authorities i.e. Twitter, Facebook and Instagram with a further direction to the respondents to individually identify all such officers/officials who have indulged themselves in such Criminal Contempt of Court and submit their details to this Court for further action to be taken against them.

3. On this submissions having been made by the petitioner, when

the Court confronted him with the provisions of Section 15 of the Contempt of Courts Act, 1971, where any other person than one specified in the said provision can initiate a motion for taking cognizance of a Criminal Contempt of Court with the consent in writing of the Advocate General or such Law Officer as the Central Government may by notification in the Official Gazette, specify in this behalf, in relation to the Union Territory, which consent has not been obtained by the petitioner, the petitioner states that the High Court may take action on its own motion.

4. No doubt the High Court has the jurisdiction to take action on its own motion but there is a purpose behind incorporating Section 15 and mandating therein the consent in writing of the Advocate General or the Law officer as may be notified by the Central Government in the case of Union Territory and the said mandate could not be ignored at the whims and fancies and at the asking of the other persons. Section 15 reads as follows:-

“15. Cognizance of criminal contempt in other cases—

(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General, [or]

(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference

made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression “Advocate-General” means,—

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.”

5. A perusal of the above would show that other than the contempt which has been referred to and the procedure as provided for in Section 14, the Court takes cognizance in three ways. It can initiate criminal contempt proceedings either by the Advocate General himself or by some other person with the consent of the Advocate General or by the Courts *suo motu*.

6. For the other persons as in the case of the petitioner herein, consent of the Advocate General to take action on motion is mandatory. Meaning thereby, in case of maintainability of a criminal contempt proceedings to be filed by private person, consent in writing of the Advocate General under Section 15 (1) (b) of the Contempt of Courts Act,

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1971 is essential. This also means that no person has unfettered right in respect of initiating a motion for Criminal Contempt of Court. The Legislature, with an intent to safeguard such a situation, where, by way of action of a personal prestige and vendetta other than the motive to uphold the dignity of Court, has imposed restrictions on such application being filed directly in the Court but instead require it to be filed with the written consent of the Advocate General who holds a constitutional position. He, by virtue of his post, has been given the responsibility to scrutinize such an application before it comes to the Court. In case of a criminal contempt to be initiated, it is not a mere formality rather it has a salutary purpose, where the highest Law Officer at the level of the State/Centre are also the Officers of the Court interested in purity of the administration of justice and preserving the dignity of the Court by going through the same, if it is found to be vexatious, malicious or motivated by personal interest and vendetta with no public interest involved therein, the same gets filtered at that very level saving not only the precious time of the Court but also fulfilling the requirement of the statute. It can also be said that this process shall ensure that the High Court is not flooded with frivolous motions but receives only motions of substance. If persons are allowed to jump queue and approach the Court directly without following the mandate of the statute, the very purpose for a statutory provision which has been enacted would be rendered frustrated. The motion for criminal contempt in a High Court/Supreme Court, if not accompanied by the written consent of the Law Officer as provided for in Section 15, the very purpose of the requirement of prior consent will be frustrated. Therefore, for a valid motion, compliance of the

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requirement of Section 15 of the Contempt of Courts Act, 1971 is mandatory and in case of it being not in conformity with the provisions as mentioned above, the said motion is not maintainable.

7. Keeping in view the above, the present motion for criminal contempt sought to be initiated against the respondents would not be maintainable and deserves to be dismissed on this ground itself.

8. Even otherwise, for a motion to be initiated *suo motu*, it must consist of allegation of facts as also the view of the motion maker that in relation to these facts, some offence appears to have been committed of which this Court should take cognizance and further action. This obviously means that not only factual aspect must be given in the petition but it should fulfill the other requirement of the statute to bring within the definition of contempt as provided for in Section 2(c). The basic requirement as per the said definition would be an intentional and deliberate action or inaction on the part of a person against whom the allegations of having committed the criminal contempt have been made. Nothing specific has come with regard to each of the respondents with regard to the specific act or conduct which would amount to criminal contempt. Merely because some officials of the police department have indulged themselves in an activity, which in the opinion of the petitioner, would amount to an act of criminal contempt, would not bring the impleaded respondents also within the framework of the statutory provisions. In the absence of any specific details and the requirement of the statute, proceedings against the respondents for criminal contempt cannot be initiated.

9. Going by the definition of criminal contempt, it means

publication whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. The pleadings which have been made in the present petition are bereft of any essential ingredients for calling such conduct on the part of the respondents to be an act of criminal contempt. For initiation of criminal contempt, satisfaction of the Court is must with regard to there being deliberate, intentional and willful action or conduct involving any of the above referred to aspect which would lower the authority of any Court, scandalize the same, tends to interfere in the Course of judicial proceedings or obstructs or tends to obstruct the administration of justice in any manner. Merely because of publication of the photographs and thereunder some comments on a news item on an aspect would not amount to any of the above referred to aspect calling for initiation of motion of criminal contempt.

10. Section 3 of the Contempt of Courts Act, 1971 also needs to be taken note of where explanation for the purpose of the said Section relating to judicial proceedings have been mentioned which is said to be pending. So far as the criminal proceedings are concerned, it has been stated that the said proceedings would be initiated when the charge-sheet or challan is filed or when the Court issues summons or warrants as the case may be against the accused and in any other case when the Court takes cognizance of the

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matter to which the proceedings relate. This aspect is also to be taken note of, which, in the opinion of this Court, is missing in the present case.

11. Section 20 of the Contempt of Courts Act, 1971 talks about the limitation for taking action for contempts where the Court has been barred to initiate any proceedings of contempt after the expiry of a period of one year from the date on which the contempt is alleged to have been committed under the Contempt of Courts Act, 1971. In this regard, the pleadings are totally silent as to when the said alleged act of criminal contempt had been committed by the respondents and in which manner. In the absence of the date of commission of the alleged contempt by the respondents, the Court is deprived of the material facts to come to a conclusion as to whether the proceedings for contempt can be initiated or not, especially when there is a limitation provided for initiating action for contempt under the statute itself.

12. In view of the above, we are of the view that these petitions do not disclose commission of any criminal contempt by the respondents calling for initiation of the proceedings for criminal contempt against them and therefore, dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

10.11.2021

Harish

(SANDEEP MOUDGIL)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes